

June 24, 2004

PUBLIC UTILITIES COMMISSION
Maine Telecommunications Education
Access Fund

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we approve a recommendation from the Maine Telecommunications Education Access Fund (MTEAF) Advisory Board concerning funding to help pay for access to the Internet for libraries that choose not to participate in the Federal E-Rate program.

II. BACKGROUND

As part of the Supplemental Budget bill, the Legislature amended 35-A M.R.S.A. § 7104-B(6) to allow public libraries to decline Federal E-Rate for Internet service if they determine that applying for E-Rate (e.g., complying with E-Rate's filtering requirements) would substantially compromise the library's standards or mission. P.L. 2003, ch. 673, Sec. IIII-1. The statute allows the Commission to mitigate the loss of Federal E-Rate funds using MTEAF funds. Under the current contract with UNET, Internet service costs \$140 per month, per site. Approximately 60% (\$84 per month or \$1,008 annually) is paid for with Federal E-Rate funds and the remaining 40% is covered by MTEAF.

The MTEAF Advisory Board recommends that MTEAF pay approximately 70% or \$59 of the amount that would have been paid for by Federal E-Rate, with the library paying 30% or \$25 per month. Currently, the Maine State Library is asking libraries to indicate whether they will filter or choose this non-filtering option. If all 243 libraries chose this option and MTEAF pays 70% of the Federal E-Rate amount, it would cost the MTEAF an additional \$172,044 annually. Some libraries are choosing to continue with Federal E-Rate, so this number represents the maximum cost.

Information from the Board accompanying its recommendation indicated that the MTEAF may be unable to fund all current commitments for FY 05 (July 2004 – June 2005) and FY 06 (July 2005 – June 2006) even without this additional payment on behalf of some libraries. Therefore we asked the Board to provide its recommendations as to prioritizing funding if sufficient funds are unavailable for all worthwhile services.

The Board reported back to the Commission on June 18, 2004. The Board recommends that the first priority in all funding decisions should be to maintain the original core offerings of free Internet service and sufficient bandwidth (56 Kbps, DSL or T1) to every school and public library. After reexamining revenues and expenses for FY 04 (through June 30, 2004), the Board believes all commitments can be met leaving a year-end positive balance of approximately \$58,000. In FY 05, it projects a deficit of around \$439,169 if all libraries filter and continue in the program. If half the libraries decide not to filter and accept the \$25 option it will increase the deficit to \$524,129.

Consistent with the first priority, the Board recommends that the Commission fund the \$59 mitigation amount despite the deficit in FY 05. Without this financial support some libraries may have to eliminate public Internet access altogether therefore eroding the core purpose of a free access for all schools students and library users.

The Board states it is committed to pursuing every possible avenue for potential cost savings. Possible sources of savings include: eliminating schools and libraries that already receive free Internet from their cable provider or other provider; eliminating libraries that do not have public users or whose collections do not serve as a statewide resource (as required by 35-A M.R.S.A. 7104-B(1)(A)); and installing less costly DSL rather than T1 lines. The Board also believes consideration should be given to asking the Legislature to increase the assessment. The current .5% assessment, the maximum permitted by statute, results in a \$3 million fund. An increase to .6% would result in \$3.6 million and .75% \$4.5 million. If sufficient savings or additional revenue is not possible, the Board recommends that any deficit in FY 05 be made up by proportionately reducing the funding for the library databases (requested amount \$500,000) and MLTI (requested amount \$2.25 million). For FY 06, if all spending for the core program remains the same, MTEAF will be unable to provide any financial support to the MLTI project.

III. DECISION

We adopt the Board's recommendation that the MTEAF fund an additional \$59 of the monthly cost for Internet service with the library paying \$25, for those libraries that determine that satisfying the conditions for receiving Federal E-Rate would substantially compromise the library's standards or mission. We further rely on the Board's judgment that if a deficit occurs in FY 05, the amounts requested by MLTI and for library databases should be reduced proportionally.¹ Providing this funding is consistent with both the recent amendment to 35-A M.R.S.A. § 7104-B and with the priorities recommended by the Board. The Board is closest to the constituencies most affected by the MTEAF funding and we rely on its judgment as to priorities for funding. Our decision is not based on any assumption of greater funding due to an increased assessment.

Dated at Augusta, Maine, this 24th day of June, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

¹ For example, if, as described above, a deficit of \$524,129 exists at the close of FY 05, both MLTI and database requests would be reduced around 20%.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.